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In the Supreme Court of the United States

OCTOBER TERM 1938

In the Matter of the Application of James J. Lowrey, Committee of the Person and Property of William Garmes, incompetent, for an order authorizing him to pay a fee to counsel for legal services rendered the estate

No. 24

FRANK T. HINES, ADMINISTRATOR OF VETERANS' AFFAIRS, UNITED STATES VETERANS' ADMINISTRATION, PETITIONER

v.

JAMES J. LOWREY, COMMITTEE OF THE PERSON AND ESTATE OF WILLIAM GARMES, AN INCOMPETENT PERSON, RESPONDENT

BRIEF OF PETITIONER

STATEMENT OF THE CASE

The question presented herein is whether the applicable statute, Section 500, World War Veterans' Act (Sec. 551, Title 38, U. S. C.), was construed by this Honorable Court in the case of *Hines vs. Stein*, 298 U. S. 94, 80 L. E. 1063, or is governed thereby; and, if not, whether the judgment of the New York

Court be not in contravention of the terms of said statute.

The question arose under the following factual situation: (The extensive and detailed statement of facts and action in the State Courts is contained in pp. 3-10 of the Petition for Certiorari, No. 945, October Term, 1937.)

James J. Lowrey, half-brother of the veteran, and committee of his person and estate under an appointment dated March 23, 1921, on or about April 21, 1934, retained his regular attorney James J. Richman to file and prosecute a claim for the veteran's war risk insurance (R-6, R-55, R-70). A purported contract, stated in letter of said date (R-70): "In the event you are successful, the court will fix your fee. In the event you are unsuccessful, you are to receive no fee."

The claim was immediately filed and denied because of Section 17, Public No. 2, 73d Congress (R. 12-13) but was reconsidered and allowed after this court in the *Lynch and Wilner cases*, 292 U. S. 571, held said section void (R. 23-24).

The attorney, after employing a representative of a Service Organization (R-42) was afforded the courtesy of a hearing before the Insurance Claims Counsel (R-37-41). He was paid his expenses (R-29) but attempted to secure an attorney fee of \$3,000. The first petition filed was for extraordinary compensation for the committee in that amount, but after the decision of this court in the

Stein case, supra, said petition was dismissed by the attorney (R. 38, 68, 69) and a petition for attorney fees filed (R. 8-11), the attorney believing, under said decision, he had a right to receive such fee direct (R. 69). (The back-ground for this procedure may be apparent from the prior decision, *In re Lowrey (Garmes' Estate)*, 287 N. Y. S. 52. The committee, through his attorney Richman, had asked for 5% commission on this same insurance—and other payments received from March 24, 1920 to March 24, 1935—and for extra compensation by reason of alleged unusual services; but the Supreme Court Special Term denied commission for prior accounting periods; and extra compensation except upon a judicial settlement or on application alleging unusual services and after notice and hearing.)

The Administrator of Veterans' Affairs, through his authorized attorney, in accord with Section 450, Title 38, U. S. C., and as authorized by Section 1384-t, Civil Practice Act, New York, objected on the ground that any fee in excess of \$10 is prohibited by Section 500, and that the fee claimed was otherwise unreasonable. The Supreme Court, Second Department, allowed a fee of \$1,500 (R. 47), which was affirmed by the Appellate Division (R. 81, 300 N. Y. S. 603) and appeal was denied (R. 80, 300 N. Y. S. 1344). This Court granted certiorari (R.-83): 82 L. Ed. (Adv.) 1041.

The sole question is whether the State Court had power to grant a fee in excess of \$10, the attorney's expenses having been paid (R. 29, 61) and there having been no suit filed in the Federal Court (R. 65).

The decision of the New York Courts (no opinion rendered, 300 N. Y. S. 603, *ibid* 1344), allowing a fee in excess of that provided and limited by Section 500, evidently was based upon the theory advanced by the attorney (R. 43) that the decision in the *Stein case* construed Section 500 and is to the effect that the Congress had not limited, and cannot limit, the discretion or jurisdiction of a State Court to allow an attorney fee in the case of an insane veteran under guardianship, inasmuch as the New York Courts had previously held, in line with other State Appellate Courts, that said statute limits the power of the State Courts in such cases. In *re Shinberg*, 263 N. Y. S. 354.

ASSIGNMENT OF ERROR

The Supreme Court, Appellate Division, Second Department, State of New York, erred in that—

1. It affirmed the order of the Supreme Court, "affirming the report of an official referee awarding to James J. Richman, an attorney, the sum of \$1,500 for legal services rendered to an incompetent's estate in securing payment of war risk insurance," in that—

Said order is contrary to the specific provisions of section 500, World War Veterans' Act (Sec. 551, Title 38, U. S. C.).

NOTE.—The other question argued in the State Court, i. e., the reasonableness of the fee de hors the statute, is not subject to review by this Court, and will therefore be discussed only incidentally as it may illustrate the recognized need upon which the applicable legislation was based, its purpose, and the propriety and validity thereof.

STATUTE AND AUTHORITIES

Section 500, Title V, of the World War Veterans' Act, 1924 (Sec. 551, Title 38, U. S. C.), is as follows:

Except in the event of legal proceedings under Section 19 of Title I of this Act, no claim agent or attorney except the recognized representatives of the American Red Cross, the American Legion, the Disabled American Veterans, and the Veterans of Foreign Wars, and such other organizations as shall be approved by the director shall be recognized in the presentation or adjudication of claims under Titles II, III, and IV of this Act, and payment to any attorney or agent for such assistance as may be required in the preparation and execution of the necessary papers in any application to the bureau shall not exceed \$10 in any one case: PROVIDED, HOWEVER, That, wherever a judgment or decree shall be rendered in an action brought, pursuant to section 19 of Title I of this Act the court, as a part of its

judgment or decree, shall determine and allow reasonable fees for the attorneys of the successful party or parties and apportion same if proper, said fees not to exceed 10 per centum of the amount recovered, and to be paid by the bureau out of the payments to be made under the judgment or decree at a rate not exceeding one-tenth of each of such payments until paid. Any person who shall, directly or indirectly, solicit, contract for, charge, or receive, or who shall attempt to solicit, contract for, charge, or receive any fee or compensation, except as herein provided, shall be guilty of a misdemeanor, and for each and every offense shall be punishable by a fine of not more than \$500 or by imprisonment at hard labor for not more than two years, or by both such fine and imprisonment."

The statute quoted, *supra* (Section 500, World War Veterans' Act), is controlling upon attorneys and guardians of insane veterans; and therefore upon State Courts having jurisdiction of such guardianships. *In re Shinberg*, 263 N. Y. S. 304; *In re Minor*, 145 So. 507; *Hines v. McCoy*, 159 So. 306.

The *Stein case*, *supra*, is not controlling. *In re Copsey*, 60 Pac. (2d) 121. (But see later decision in same case, 76 Pac. (2d) 691, indicating judicial uncertainty on the question.)

Any contract contrary to the provisions of said Section 500 is illegal, and hence void. *Conlon v. Adamski*, 77 Fed. (2d) 397. The contention of re-

spondent that the Congress may not limit an attorney fee in a matter pending in a State Court is contrary to the decision of this Honorable Court in *Capital Trust Co. v. Calhoun*, 250 U. S. 208, and *Ball v. Halsell*, 161 U. S. 72.

The Congress may, indirectly, restrict effective action by State Courts through legislation on a subject within its constitutional power, and may prohibit, or render unenforceable, contracts contrary to legislation within such constitutional power. *Gold Clause Cases*, 294 U. S. 240; *Gibbons v. Ogden*, 9 Wheat. 1, 22 Law Ed. 207. In enacting said statute (Section 500, World War Veterans' Act) the Congress acted within such power. *Margolin v. U. S.*, 269 U. S. 93.

The intent of the statute, i. e., to be all inclusive and to operate on all alike, if not clear from the language used by the Congress, may be gleaned from the Legislative History. *Margolin v. U. S.*, 269 U. S. 93; *U. S. v. Carolene Products Company*, 82 L. Ed. (Adv.) 810-815.

The debate on Section 13, War Risk Insurance Act (now Section 500) (Congressional Record, Volume 56, Part 6, pp. 5220-26, April 17, 1918) is quoted in part in the record herein (R. 48-51).

While this court has intimated, in *Hines v. Stein*, a view that there may be no necessity for limiting fees to be allowed by courts, the Congress may determine questions of fact and policy, as a basis for legislation, and such decision is final. *Gold Clause cases, supra*; *Ball v. Halsell, supra*.

SUMMARY OF ARGUMENT

1. In enacting Section 500, the Congress of the United States limited all fees for services permitted thereby; and evinced an intention that such limitation should be controlling as to all fees, whether in a State or Federal Court, and on all persons whether dealing with sane or insane veterans.

2. While the Congress may not directly qualify the power or procedure of a State Court, it may, and frequently does so indirectly, that is, by legislation, upon a particular subject.

3. When the Congress has validly legislated on a subject, the law, as the supreme law of the land, *McCulloch v. Md.*, 4 Wheat. 316, is applicable to all, and the judgments of Federal and State Courts must be in conformity thereto.

4. The necessity for the policy, and the factual basis for the legislation, is for the Congress to determine; and its intention expressed in legislative act, if directed to a constitutional end; is controlling.

5. The legislative history confirms the apparent meaning of the act and shows the intent of Congress to limit fees allowable for services specified therein, rendered any veteran—sane or insane.

6. Section 500 is therefore controlling as to fees allowable by State Courts for services stated.

7. State Courts of appellate jurisdiction have held heretofore that there is no power to allow a fee contrary to Section 500.

8. The decision of this Court in *Hines v. Stein* did not construe said Section 500 and does not govern the application thereof; but the case is controlled by the decision in *Ball v. Halsell* and *Capital Trust Company v. Calhoun*, supra.

9. The contract, if construed contrary to Section 500, is clearly illegal and void.

10. Section 500 establishes a general fee limitation in favor of an insane veteran which the court has no power to waive.

11. The theory of, and reasons for, the limitation of attorney fees in insurance and compensation cases are identical with those underlying the New York statute limiting such fees in Workmen's Compensation cases.

12. Finally, the veteran contracted for the protection of the Statute, and the court must give effect to the fee limitation as a part of the veteran's contract.

ARGUMENT

Upon the above assignment of error the following argument is respectfully submitted.

1. In enacting Section 500 the Congress of the United States limited all fees for services permitted thereby; and evinced an intention that such limitation should be controlling as to all fees, whether in a State or Federal Court, and on all persons whether dealing with sane or insane veterans.

The language of the Act, in pertinent part, is—

Except in the event of legal proceedings under Section 19 * * * no * * * attorney * * * shall be recognized in the presentation and adjudication of claims * * * and payment to any attorney or agent for such assistance as may be required in the preparation and execution of the necessary papers in any application to the bureau shall not exceed \$10 in any one case, * * *. Any person who shall directly or indirectly, solicit, contract for, charge, or receive, or who shall attempt to solicit, contract for, charge, or receive any fee or compensation, except as herein provided, shall be guilty of a misdemeanor, * * *.

It will be observed that the section includes (1) Fees in a Federal Court in a suit for insurance, (2) all other fees in connection with claims under the Act. As to (1) the Section, read in conjunction with Section 19 (Sec. 445, Title 38, U. S. C.), confers jurisdiction on the Federal Courts but limits the exercise thereof; as to (2) it provides a universal limitation without any exception.

Can this language, enacted for the protection of all veterans and claimants for benefits, and by its clear terms made applicable to all persons in all claims under the Act, be so construed as to deprive an insane veteran of such protection and to make legal, because approved by a probate court, an act declared a misdemeanor by the law? Can this Act,

which is wholly beneficial legislation designed for the welfare of veterans, be so narrowly construed against insane veterans if susceptible of a construction protecting their rights? This question, it is believed, has not been passed on by this Court, although the above quoted language was construed in

Margolin v. United States, 269 U. S. 93

In that case the attorney Margolin had been convicted in the Federal District Court for a violation of the penal provisions of said Act. This was affirmed by the Circuit Court of Appeals (2nd Circuit) that court saying (3 Fed. (2d), p. 602):

One Yetta Cohen retained the defendant to press, and secure the allowance of her claim as beneficiary under a policy taken out by Joseph Freeman, her nephew, who died while enlisted in the United States Army. He had some correspondence with the Veterans' Bureau and made one trip to Washington to examine the records and interview the officials. It may be assumed that his services were of substantial service in procuring an allowance of Yetta Cohen's claim, and under any appraisal were worth many times the sum of \$3. For them he demanded \$2,000 and received \$1,500.

In his negotiations with the Bureau he must have been recognized as an attorney in the presentation of her claim, or his services could effect nothing. If he was so recognized, it was in the face of the statute, and

he can recover nothing for services which he is forbidden to render. The act established a system designed to be self-executing. It makes no difference how well or ill it works. With obvious jealousy of the mediation of agents or attorneys, who might fleece the beneficiaries, it excluded them from any share in its operation, except to draw up the simple papers. The system must get along without their help, and if the beneficiaries suffer more than they would if they could employ attorneys with the risk of extortion, *courts may not correct the blunder.* [Italics supplied.]

This Court, affirming the decision of the Circuit Court of Appeals, *supra*, after reviewing the legislative history of the statute, said:

We find no reason which would justify disregard of the plain language of the section under consideration. It declares that any person who receives a fee or compensation in respect of a claim under the Act except as therein provided shall be deemed guilty of a misdemeanor. The only compensation which it permits a claim agent or attorney to receive where no legal proceeding has been commenced is three dollars for assistance in preparation and execution of necessary papers. And the history of the enactment indicates plainly enough that Congress did not fail to choose apt language to express its purpose.

The validity of Section 13 construed as above indicated, we think, is not open to serious doubt.

It would seem that our inquiry should end here, the decision last above cited, construing as it did the statute applicable to the facts in the instant case, seeming to say that under no circumstances may a fee contrary thereto be received. But the basis of the State Court's decision seems to be that, applying the theory of the decision of this Court in the case of *Hines v. Stein*, 298 U. S. 94, if Margolin had procured his \$1,500 fee to be approved by a probate court in a guardianship proceeding it would not have been a violation of the statute. In effect that Section 500 constitutes no limitation on a fee allowable by a State Court.

Aside from the fact that Section 500 was not involved in the *Stein* case, is such decision authority for the proposition that a State probate court has power to allow a fee contrary to the provisions of said statute?

This Court said in that case (298 U. S. at p. 97):

Petitioner submits that Congress, proceeding within its delegated power, directly, or through authorized executive action, has prescribed permissible fees for services such as those rendered by Sherrard, and directed how they may be paid. Also has inhibited payment of other or different sum in any manner.

We need not consider the extent of Congressional power in this regard, since we are of opinion that, properly construed, the provisions relied upon do not apply where

payments like the one here involved are directed by a state court having jurisdiction over the guardian of an incompetent veteran.

The petition for certiorari asserts that the objections to respondent's application to the Court of Common Pleas were based upon the President's Order of March 31, 1933 (Veterans' Regulation No. 10), permitted by Sections 4 and 7 of the Act of March 20, 1933, c. 3, 48 Stat. 9; "Instructions" promulgated by the Administrator under authority of that Order; and Sections 111, 114, and 115, Title 38, U. S. C. A.

Nothing brought to our attention would justify the view that Congress intended to deprive state courts of their usual authority over fiduciaries or to sanction the promulgation of rules to that end by executive officers or bureaus.

The broad purpose of regulations in respect of fees of those concerned with Pension matters is to protect the United States and beneficiaries against extortion, imposition, or fraud. *Calhoun v. Massie*, 253 U. S. 170, 173. Dangers of this character are not to be expected in connection with the orderly exercise of authority by state courts over appointees properly entrusted with Pension funds. The purpose in view is for consideration when the true meaning of statute or rule is sought. [Italics supplied.]

If by this decision it were meant that the Congress cannot limit or affect the action or judgment of a probate (state) court, it would be clear that the answer to the above question would be in the

affirmative. That such was not the meaning intended is believed apparent, not only from the language used by the court, but by reason of a long line of decisions holding that the Congress, in enacting legislation, within its constitutional power, on a specific subject, affects or controls the exercise of jurisdiction by State Courts on the subject of such Federal law. *Mondou v. Ry. Co.*, 223, U. S. 1, and cases cited.

2. While the Congress may not directly qualify the power or procedure of a State Court, it may, and frequently does so indirectly, that is, by legislation upon a particular subject.

McCulloch v. Maryland, 4 Wheat. 316

This Court, speaking through Chief Justice Marshall, said at page 405:

If any one proposition could command the universal assent of mankind, we might expect it would be this, that the government of the Union, though limited in its powers, is supreme within its sphere of action. This would seem to result necessarily from its nature. It is the Government of all; its powers are delegated by all; it represents all, and acts for all. * * *

and at page 426:

This great principle is that the Constitution and the laws made in pursuance thereof are supreme, that they control the Constitution and laws of the respective states, and cannot be controlled by them.

*Mondou v. New York, New Haven, and Hartford
Railway Company, 223 U. S. 1*

That was a case involving rights arising under the Federal Employees' Liability Act, the State Courts having declined to take cognizance of certain provisions thereof as being contrary to their procedure. This Court said (p. 55):

We come next to consider whether rights arising under the congressional act, may be enforced, as of right, in the courts of the states when their jurisdiction, as prescribed by local laws, is adequate to the occasion * * *

And at page 56:

Because of some general observations in the opinion of the supreme court of errors, and to the end that the remaining ground of decision advanced therein may be more accurately understood, we deem it well to observe that there is not here involved any attempt by Congress to enlarge or regulate the jurisdiction of state courts, or to control or affect their modes of procedure, but only a question of the duty of such a court, when its ordinary jurisdiction as prescribed by local laws, is appropriate to the occasion and is invoked in conformity with those laws, to *take cognizance of an action to enforce a right of civil recovery arising under the act of Congress, and susceptible of adjudication according to the prevailing rules of procedure.*

The suggestion that the act of Congress is not in harmony with the policy of the state, and therefore that the courts of the state are free to decline jurisdiction, is quite inadmissible, because it presupposes what in legal contemplation does not exist. When Congress, in the exertion of the power confided to it by the Constitution adopted that act, *it spoke for all the people and all the States, and thereby established a policy for all*. That policy is as much the policy of Connecticut as if the act had emanated from its own legislature, and should be respected accordingly in the courts of the state. As was said by this Court in *Clafin v. Houseman*, 93 U. S. 130, 136, 137; 23 L. E. 833, 838, 839:-

"The laws of the United States are laws in the several states, *and just as much binding on the citizens and courts thereof as the state laws are*. The United States is not a foreign sovereignty as regards the several states, but is a concurrent, and, within its jurisdiction, paramount sovereignty. * * *

If an act of Congress gives a penalty (meaning civil and remedial) to a party aggrieved, without specifying a remedy for its enforcement, there is no reason why it should not be enforced, if not provided otherwise by some act of Congress, by a proper action in a state court. The fact that a state court derives its existence and functions from the state laws is no reason why it should not afford relief—because *it is subject also to the*

laws of the United States, and is just as much bound to recognize these as operative within the state as it is to recognize the state laws. The two together form one system of jurisprudence, which constitutes the laws of the land for the state; and the courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent. * * * It is true, the sovereignties are distinct, and neither can interfere with the proper jurisdiction of the other, as was so clearly shown by the Chief Justice Taney, in the case of *Albeman v. Booth* (21 How. 506, 16 L. E. 169); and hence the state courts have no power to revise the action of the Federal Courts, nor the Federal the State, except where the Federal Constitution or laws are involved. But this is no reason why the state courts should not be open for the prosecution of rights growing out of the laws of the United States, to which their jurisdiction is competent, and not denied."

(At p. 58):

"We conclude that rights arising under the act in question may be enforced, as of right, in the courts of the states when their jurisdiction, as prescribed by local laws, is adequate to the occasion." [Italics supplied.]

Further, this Court said in *Norman v. Ry. Co.*, 294 U. S. 240, at p. 309:

The principle is not limited to the incidental effect of the exercise by the Congress of its constitutional authority. There is no constitutional ground for denying to the Congress the power expressly to prohibit and invalidate contracts although previously made, and valid when made, when they interfere with the carrying out of the policy it is free to adopt.

3. When the Congress has validly legislated on a subject, the law, as the supreme law of the land, *McCulloch v. Maryland*, supra, is applicable to all and the judgments of Federal and State courts must be in conformity thereto.

Ball v. Halsell, 161 U. S. 72.

• That was an action in a Federal Court on a written contract between one Halsell and an attorney, Ball, whereby the latter was to prosecute a claim, in favor of the former, against the United States, based upon alleged Indian depredations; and if successful to receive one-half of all moneys received. The claim was against the executrix of Halsell's estate. In the Indian Claims Act, March 3, 1891, Chapter 358, the Congress *prohibited any fee to an attorney other than as allowed by the Court of claims* and then not to exceed 20% of the amount recovered, and made void any contracts to the contrary.

Mr. Justice Gray delivering the opinion of the Court said (p. 80):

By several decisions of this court, indeed, beginning at December term, 1853, contracts for contingent fees, by which attorneys employed to prosecute claims against the United States were to be allowed a proportion of the amount recovered in case of success, and nothing in case of failure, were held to be lawful and valid.

Congress has evidently considered that, in some cases at least, to permit contracts to be made for the payment to attorneys, by way of contingent fee, of a large proportion of the amount to be recovered, is in danger of leading to extortion and oppression.

(At p. 83):

In view of previous experience, this last provision was a wise, reasonable, and just provision for the protection of suitors; and it was clearly within the constitutional power of Congress.

(At p. 85):

For the reasons above stated, Ball cannot maintain this action upon the contract between him and Halsell; and he does not sue and could not recover, upon a quantum meruit.

Capital Trust Company v. Calhoun, 250 U. S. 208

That was a proceeding in equity against an executor for an accounting in a probate (circuit) court of Kentucky wherein the attorney, Calhoun, inter-

vened and secured a decree ordering the executor of the estate of one Arnold to pay an attorney fee based upon a contract to prosecute a claim against the United States for a fee of 50% of any amount collected. The Court of Appeals of Kentucky affirmed the decree, 177 Ky. 518, 197 So. 944, and a writ of error to this court was sued out on the ground that the Congress had validly limited the attorney's fee to not to exceed 20% of the amount recovered. In reversing the decree of the State Court this Court, speaking through Mr. Justice McKenna, said (p. 216) :

But the judgment is construed by the parties as having more specific operation, construed as subjecting the money received from the government to the payment of the balance of Calhoun's fee; doubtless because the estate has no other property. On that account it is attacked by the Trust Company and defended by Calhoun. The controversy thus presented is discussed by counsel in two propositions: (1) The validity of the contract independently of the limitation imposed by Congress upon the appropriated money; (2) the power of Congress to impose the limitation as to that money. The latter we regard as the main and determining proposition; the other may be conceded, certainly so far as fixing the amount of compensation for Calhoun's services.

(At p. 217) :

We, however, need not dwell upon the distinctions (their soundness may be dis-

puted), nor upon the contentions based upon them, because, as we have said, we consider the other proposition, that is, the power of Congress over the appropriated money and the limitation of payment out it to an agent or attorney to 20 per cent of the claim, to be the decisive one.

In its discussion counsel for Calhoun have gone far afield and have invoked many propositions of broad generality, have even adduced as impliedly against the power, if we understand counsel, the constitution of the court of claims and its jurisdiction, as weight in the same direction.

(At p. 218):

In a general sense there is force and much appeal in the contentions, but we think they carry us into considerations beyond our cognizance. Liberty in any of its exertions and its protection by the Constitution are of concern. The right to bind by contract and require performance of the contract are examples of that liberty and that protection, and they might have resistless force against any interfering or impairing legislation if the contest in the case was simply one between Calhoun and the Arnold estate. But there are other elements to be considered, *there is the element of the condition Congress imposed on the subject-matter of the controversy, regarded as a condition of its grant.* [Italics supplied.]

(At p. 219):

The contention (i. e., that the legislation was beyond the constitutional power of Congress) has no legal basis, and it may be said it has no equitable one. Neither the justice nor the policy of what sovereignty may do or omit to do can be judged from partial views or particular instances. It is easy to conceive what difficulties beset and what circumstances had to be considered in legislating upon such claims. Definite dispositions were matters of reflection, and, it may be, experience, imposition was to be protected against as well as just claims provided for; and, considering claimants and their attorneys in the circumstances, it may have seemed to Congress that the limitation imposed was fully justified—that 20 per cent of the amounts appropriated would be a proper adjustment between them. We are not concerned, however, to accuse or defend. Whatever might have been the moving considerations, the power exercised must be sustained. [Parenthesis ours.]

And in *Calhoun v. Massie*, 253 U. S. 170, this Court held that the limitation as to the fee is not confined to the proceeds of the Congressional grant, i. e., it is a general limitation.

4. The necessity for the policy, and the factual basis for the legislation, is for the Congress to determine; and its intention expressed in legislative act, if directed to a constitutional end, is controlling.

When the Congress has exercised its constitutional prerogative in legislating on a *subject*, for example bankruptcy, currency, commerce, or attorney fees in claims against the Government, State laws, statutory or common, and State Court jurisdiction and procedure are affected and controlled thereby as this court has held in the cases cited and numerous others. The determination of the *necessity* for such legislation is a legislative, not a judicial, function.

Norman v. B. & O. Railway Co., 294 U. S. 240

In that case, and in the other *Gold Clause* cases decided contemporaneously, the opposition was directed to the power of Congress with particular respect to the due process and impairment of contract provisions of the Constitution. In sustaining the legislative power this Court, speaking through Mr. Chief Justice Hughes, said (p. 307):

Here, the Congress has enacted an express interdiction. The argument against it does not rest upon the mere fact that the legislation may cause hardship, or loss. * * * And the contestants urge that the Congress is seeking not to regulate the currency, but to regulate contracts, and thus has stepped beyond the power conferred.

This argument is in the teeth of another established principle. Contracts, however express, cannot fetter the constitutional authority of the Congress. Contracts may

create rights of property, but when contracts deal with a subject matter which lies within the control of the Congress they have a congenital infirmity. Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them.

(At p. 311):

That point is whether the gold clauses do constitute an actual interference with the monetary policy of the Congress in the light of its broad power to determine that policy. Whether they may be deemed to be such an interference depends upon an appraisalment of economic conditions and upon determinations of questions of fact. *With respect to those conditions and determinations, the Congress is entitled to its own judgment.* We may inquire whether its action is arbitrary or capricious, that is, whether it has reasonable relation to a legitimate end. *If it is an appropriate means to such an end, the decision of the Congress as to the degree of the necessity for the adoption of that means, is final.* [Italics supplied.]

5. The legislative history confirms the apparent meaning of the act and shows the intent of Congress to limit fees allowable for services specified therein, rendered any veteran—sane or insane.

Since legislation on a subject, or as to persons, is controlling as to power of courts, and since the language of Section 500 seems sufficiently broad to include all persons and all courts, the argument

that a probate court has jurisdiction to allow a fee contrary thereto must be based upon the proposition that the Congress *did not intend* to limit the power of State Courts as to fees that may be allowed in preparing and filing claims for war risk insurance (or for other benefits included in Section 500).

Did the Congress consider that there was necessity for limiting fees to be allowed in such cases by State Courts, and if so did it evidence its intent by apt language in the legislative enactment (*Margolin v. U. S.*, supra) ?

This court took judicial notice, in the *Margolin case* of the legislative history of Section 13, War Risk Insurance Act (now Section 500). Further light is shed on the question by the debates in the House of Representatives on this section reported in the Congressional Record, Volume 56, Part 6, pp. 5220-26, April 17, 1918, which are contained in part in the record in this case (R. 48-51). Portions of the debates believed pertinent to this inquiry are as follows:

Mr. RAYBURN. The only reason on earth for the introduction and report of this bill and the asking for its consideration is that since the passage of the war risk insurance act, like what happened under the pension act to some extent, organizations of lawyers have been formed from one end of this country to the other, so-called lawyers, who have been preying upon the ignorance of the

people, who are the beneficiaries of the act for insurance, compensation, and allotments.

Mr. MOORE of Pennsylvania. That ought to be stopped.

Mr. RAYBURN. That is exactly what we are trying to stop, and that is the only thing this bill seeks to do.

Mr. TREADWAY. The reason for the introduction of this measure is very plain. I desire to call attention to a sentence in section 13 of the war risk insurance act approved October 6, 1917, which reads as follows:

"The director shall adopt reasonable and proper rules to govern the procedure of the divisions to regulate the matter of compensation, if any, but in no case to exceed 10 percent, to be paid to claim agents and attorneys for services in connection with any of the matters provided for in Articles 2, 3, and 4."

Now Articles 2, 3 and 4, are the allowance, compensation, and war-risk insurance, so that you see whatever was done under the authority of a claim agent entitles that agent to receive 10 percent of the benefits derived by the beneficiary from the Government. In other words, take, as an illustration, a \$10,000 war-risk insurance policy. Such a policy would not be paid in a lump sum of \$10,000, but would cover a period of 20 years, or 240 months.

Now, then, during the entire life of that policy the claim agent who has presented the

claim to the War Risk Bureau can demand the 10-percent commission for those services.

Undoubtedly, that was a mistake in the framing of the bill. The bill never was so intended. The department did not intend, the gentlemen who offered the war-risk insurance bill did not intend, nor did the Committee on Interstate and Foreign Commerce intend that any such opportunity should be given to the claim agent.

* * *

I hold in my hand a set of papers. * * *

This is the form in which the claim agents sent out the papers, giving them power of attorney and agreement as to attorney's fees, and a form of printed letter of which

I want to read one sentence: * * *

"Of course, you understand that in a claim of any sort against the Government, no officer or agent of the Government can render the claimant the aid and counsel an attorney can * * *"

And so forth. In other words, this claim-agent concern here says that it can do better service for the beneficiaries under the war-risk insurance act than can any officer or agent of the Government. Was there ever a more deceiving communication put in the hands of friends and bereaved relatives than such a letter as that?"

Unless there is still some joker we have not discovered [italics supplied], enactment of this bill will absolutely prevent applications being made by claim agents in behalf

of beneficiaries under the act who would prevent them from obtaining all that is justly their due.

There is no need for the intercession of agents or attorneys in these claims, as already stated.

* * * * *

Mr. JUUL. I should like to ask the gentlemen if the penalty clause in this bill may not be misunderstood, and should it not provide an exception in favor of people who legally represent claimants when there is a dispute between the Government and the claimant?

Mr. TREADWAY. That must come through court action. There could be no question of any discrepancy in that feature.

Mr. JUUL. But, if the gentlemen will pardon me, in line 22 you provide a penalty against anyone who shall negotiate with anybody—

Mr. TREADWAY. It is intended that it should.

Mr. JUUL. I understand; but there are cases where attorneys are permitted by the bill, and you do not except those attorneys from the penalty.

Mr. TREADWAY. May I call the gentleman's attention to the fact that there are two places where attorneys or claim agents are recognized? One is in the preparation of the papers and the execution of necessary papers, where not to exceed \$3 may be charged. That is simply a clerical service.

Then, you will see the bill also recognizes attorneys in connection with a suit.

Mr. JUUL. Yes.

Mr. TREADWAY. *There is no other place where the claim agent can legally perform services, and it is not intended that there should be. [Italics supplied.]*

Mr. JUUL. My question to you is whether or not you are providing a penalty for the attorney who properly represents the claimants before the Government, where there is a dispute as to the appointment and who the claimants are.

Mr. TREADWAY. If the gentleman will read lines 10 to 21, I think he will get the information; but I would be glad to take it up with the gentleman any time.

* * * * *

Mr. JUUL. * * * This is an important matter. Here is the situation, that time may run against the claimants. The claimants can not negotiate with the attorney. Suppose the claimant is tired out by departmental delay. He goes to an attorney and seeks to get redress. The attorney is absolutely prohibited from negotiating with him for any fee.

Mr. SNOOK. In case of allotment or compensation the case will be entirely taken care of by the Government, and there will be no reason for an attorney at all, because the Government will investigate the question and it will be decided without the need of an attorney. Now, when it comes to the question of insurance, as soon as there is a dis-

agreement he is allowed to employ an attorney, and the court is authorized to allow an attorney fee up to 10 percent.

Mr. JUUL. Suppose there is a disagreement as to who is the legal claimant in the case; may the one who is decided by the department not to be the legal claimant go to his attorney and say, "I, and not the other man, am the legal claimant," and if he does, is the attorney to be subjected to a penalty because he negotiates?

Mr. SNOOK. No; not if he negotiates, but if he charges a fee not authorized by the law. * * *

Mr. LINTHICUM. Is not the gentleman wrong when he says that it provides a 10 percent fee? Does not the law provide not exceeding 10 percent?

Mr. GREEN of Iowa. If the gentleman has practiced law, as I presume he has, I will ask if he ever knew of a court cutting down those fees?

Mr. LOBECK. And the gentleman has had experience as a judge, too?

Mr. GREEN of Iowa. The gentleman will excuse me from answering that. I am not speaking from the standpoint of a judge; if I was, I would say the attorney always claims to have earned the fee. o

Mr. DEWALT. * * * This act provides: "*And provided further, That no claim agent or attorney shall be recognized in the presentation or adjudication of claims under articles 2, 3, and 4 of the original act.*"

Now, what are articles 2, 3, and 4 of the original act? Article 2 in the original act is in reference to allotment of family allowances. Article 3 is as to compensation for death or disability. Article 4 is as to insurance. So the proposed legislation succinctly sets forth that no claim agent or attorney shall be recognized in the presentation or adjudication of claims in regard to compensation, in regard to insurance, or in regard to allotment, except as provided in this act, namely, that there shall be an allowance of \$3 for the preparation of papers in the presentation of the claim, and that no other allowance shall be made. That shall be the maximum.

The bill was passed without amendment, although the \$3 limitation was, in section 500 (Act June 7, 1924, as amended March 4, 1925), raised to \$10. Numerous attempts have been made to repeal or modify this section, but the Congress has ever refused to do so, and as late as June 29, 1936 (Pub., No. 844, 74th Congress, Sec. 200-203), affirmed the principle of fee limitation therein contained. If the language of the statute be not clear, certainly the legislative history, including the debate quoted, leaves no doubt that the intent was to prohibit a fee in excess of \$10 under any circumstances, except in a successful suit on the insurance contract.

It seems apparent that by this legislation the Congress intended to protect all veterans; but it has evidenced further purpose to afford the greatest

possible protection to insane veterans, with special emphasis on illegal or excessive attorney fees allowed by probate courts in guardianship cases. The real purpose of the Congress in placing upon the Administrator the duty and responsibility of appearing in probate courts to protest excessive fees is shown likewise by the reports and debates on that part of a Bill which is now Section 450, Title 38, U. S. C. (Section 21, World War Veterans' Act, as amended by the Act of August 12, 1935, Public, No. 262, 74th Congress). This is the law, whereunder the Administrator of Veterans' Affairs was required to appear in the State Court in the instant case and object to the fee as illegal or "in excess of that allowed by law."

(Congressional Record, June 26, 1926, Vol. 67, No. 166, P. 12079):

Mr. ROBINSON of Arkansas. My information is that the retention of this House language will give the Veterans' Bureau a standing and enable it to protect the veterans against the practices which are implied in the charges against * * *

Mr. REED of Pennsylvania. * * * Quite seriously, we are in full agreement with what the Senator has said about the impropriety, but we did not think it was right to have the Veterans' Bureau usurp the authority of the State Courts which appoint these guardians. What we have done has been to adopt the House language, which the Senators will find on the following page of

the bill, which gives the director authority to go into these courts of appointment whenever he finds anything to take exception to in the conduct of a guardian, gives him standing to interplead, as it were, and ask the removal or the surcharge of the guardian.

Mr. DILL. The Senator says we do not want to interfere with these courts, but the Senator knows that the Congress cannot reach the courts but the Congress can reach the director if he does not protect these people in his charge.

* * * *

Mr. DILL. The history of the matter shows that the courts did not protect them, and therefore Congress ought to, by this legislation.

Mr. REED of Pennsylvania. In this legislation we give the director authority to go into any State Court and we provide for the payment of the necessary expenses and fees in doing so. We thought—perhaps the Senate will disagree with us—that that was as far as we ought to go in the recognition of the independence of the several States in the appointment of conservators and guardians.

(At p. 12082):

Mr. GEORGE. * * * There is not a shadow of doubt that the Congress appropriating money for the disabled veterans may safeguard that money; and there is not a shadow of doubt that the Director of the Veterans' Bureau may be given authority to

appoint a guardian for the ward or to withhold the payment of money to the guardian if for any reason he finds that the guardian is commercializing the infirmities and the afflictions of the ward. Congress has that power, undoubtedly, but it seemed to many members of the Committee that it was a sounder policy to recognize the validity of the appointment of a guardian by the State of Virginia or the State of Alabama or the State of Georgia or the District of Columbia and allow the director of the bureau to go into the court and bring to the attention of the court any irregularity or any misconduct upon the part of the guardian.

* * * *

Mr. DILL. The Senator says he is a ward of the State Court. I do not care whether he is a ward one way or the other. The fact remains that these men are taken care of at the expense of the Federal Government; and *if any State Court in its action fails to protect these men, then I think Congress ought to provide that the man who is under the direction of Congress, namely the director, should protect them.*

* * * *

The section as enacted provides in part: "Whenever it appears that any guardian * * * or other person * * * has collected or is attempting to collect fees * * * that are inequitable or are in excess of those allowed by law * * * the director (Administrator) is hereby empowered

by his duly authorized attorney to appear in the court which has appointed such fiduciary and make proper presentation of such matters to the court."

It is not reasonably to be presumed that the Congress would require the Administrator to make such representations, as to "fees * * * in excess of those allowed by law", without being convinced of the necessity for such action; that is that insane veterans need additional protection in probate courts.

6. Section 500 is therefore controlling as to fees allowable by State Courts for services stated.

It is believed that the legislative history clearly shows that the Congress was of the opinion that all veterans, sane or insane, and whether sued in court on a contract or in a guardianship proceeding, needed, and that it was the intent to afford protection against attorney fees in excess of those fixed by the Congress as proper and allowable. Further, that as to insane veterans under guardianship, and therefore under the protection of the State Courts, the Congress has—not once merely but several times, and after exhaustive investigations and hearings—determined that they need added protection. As said by this court in *Spicer v. Smith*, 288 U. S. 430, the Congress showed a purpose "to safeguard to beneficiaries the appropriations and payments made for their benefit * * * and evince special solicitude for the protection of veterans who by reason of mental incompetency are unable to

protect themselves." If a sane veteran, or beneficiary, is entitled to protection against excessive attorney fees (*Margolin case, supra*) why, especially in view of the expressed Congressional solicitude, should not insane veterans be entitled to the same protection?

Further, why should not the limitations as to attorney fees (Section 500) be binding upon the State Courts the same as those with respect to taxation, or exemptions from creditor claims, Section 454, Title 38, U. S. C., contained in the same original Act and carried forward in all subsequent amendments thereof?

Lawrence v. Shaw, 300 U. S. 245

This court held such limitations as to taxation of the funds paid a guardian of an insane veteran, and deposited by him in a bank, valid and controlling even as against the sovereign power of a State, and reversed the judgment of the Supreme Court of North Carolina which had affirmed an order of the Superior Court, the court having jurisdiction of the guardianship.

7. State Courts of Appellate jurisdiction have held heretofore that there is no power to allow a fee contrary to Section 500.

Prior to the present case no State Appellate Court has ever held that Section 500 is not absolutely controlling as to power to allow attorneys' fees in connection with the claims for benefits under

the World War Veterans' Act, as amended. The *Stein Case*, arising in the Superior Court, Allegheny County, Pennsylvania, involved the pension acts and Executive Orders, but not Section 500. *In re Stein*, 180 Atl. 577. One of the clearest expositions of the doctrine that the State probate courts are, and should be, bound by the Federal Statute is contained in a case decided in the Supreme Court, Appellate Division, First Department, New York. *In re Shinberg, Hines v. Schwartz*, 263 N. Y. S. 354, 238 A. D. 74.

In that case the attorney Schwartz, acting for the committee for the insane veteran, filed an action prematurely (i. e., without having secured the requisite jurisdictional disagreement, although this was not conceded), in the Federal District Court, Eastern District of New York, on the contract of insurance. Said suit was voluntarily dismissed, whereupon the claim was paid by the Veterans' Administration. The committee secured from the probate court (Supreme Court, First Department, New York) an order to pay the attorney a sum equal to 10% of the amount received. The Administrator of Veterans' Affairs filed an application pursuant to New York practice to vacate the order, which was denied, but the Appellate Court reversed the Supreme Court saying:

The respondent contends that inasmuch as the settlement was made after the claim had been denied by the government, and after

he had instituted an action in the United States District Court, he is not bound by the \$10 limitation.

All the parties connected with the litigation speak in very glowing terms of the able services rendered by the respondent in behalf of the incompetent. Mrs. Shinberg, the wife of the veteran, has submitted an affidavit in which she avers that her husband would not have received anything if it had not been for the services of the respondent, Sanford N. Schwartz.

The appellant contends, however, that it is his duty to object to the allowance made by the court, in view of the provisions of Title 38, U. S. Code Annotated, Section 551, to the effect that the payment of any claim agent or attorney for assistance in the preparation and execution of necessary papers in any application to the bureau shall not exceed \$10; that wherever a decree or judgment shall be rendered in an action, the court shall determine and allow reasonable fees for the attorney not to exceed 10 percent of the amount recovered, the respondent is bound by the provisions thereof, and not having applied for a decree or judgment he becomes a creditor against the estate of the incompetent person.

We are confronted with the emphatic language of this statute, which provides that an attorney must not take more than \$10 for services rendered to an incompetent person, unless a judgment or decree is entered; at

which time the court must provide in said judgment or decree for the allowance of a reasonable fee not to exceed 10 per centum of the amount recovered and to be paid. This statute was considered in *Welty v. United States* (C. C. A.) 2 Fed. (2d) 562, where the court held that the statute does not prevent a guardian, or other person, paying out of his own funds compensation to an attorney for his services, but that the estate of the ward should not be taxed with an additional fee unless suit is filed.

In *Purvis v. Walls et al.*, 184 Ark. 887, 44 S. W. (2d) 353, an attorney was indicted for taking more than the fee permitted by statute. He accepted \$1,380 for securing benefits under war risk insurance, similar to those secured in this case. After a trial in the District Court he was convicted, and on appeal the conviction was affirmed. *Purvis v. United States* (C. C. A.) 61 Fed. (2d) 992. Judge Kenyon wrote an opinion for the Circuit Court of Appeals in which he held it to be a crime to take more than the \$10 allowed by statute, unless such allowance is made as provided by law. See also *Lopez v. United States* (C. C. A.) 17 Fed. (2d) 462; *Margolin v. United States*, 269 U. S. 93, 46 S. Ct. 64, 70 L. E. 176.

In the *Matter of Zadurin's Estate*, 142 Misc. 24, 25, 253 N. Y. S. 652, 653, the surrogate of New York County in a similar case disallowed a claim of \$1,500, stating: "This court will not affirmatively join in a violation

of the rules governing attorneys' fees in such Federal matters as the war-risk insurance. The amount involved in the assignment does exceed the allowance permitted by the Federal rule. * * * The claim in the sum of \$1,500 is disallowed."

The argument is here made that suit was brought in the present instance. It must be admitted, however, that the suit was discontinued and the claim settled by the government with the committee for the incompetent.

This is not a case where a judgment or decree was entered. Although the statute does say that the \$10 limitation applies where no suit has been filed, nevertheless it also provides that any allowance to be made where a suit has been filed must be made in the judgment or decree growing out of that action.

There may be cases where the enforcement of this statute will result in a hardship. Admitting that this may be such a case, nevertheless the necessity for such a statute must be apparent, especially in view of the great need of protection for people who really are wards of the court and who, in the absence of such statutory provision, would, in many cases, be preyed upon by the unscrupulous. Because it safeguards and protects the unfortunates who are wholly dependent upon the government for support, this statute should be rigidly enforced.

In the present case, the court has no power to award any portion of the war-risk insurance to the attorney for the committee

of the incompetent. The order should be reversed, and the motion granted.

Order reversed, and motion granted.
Order filed. All concur.

A like conclusion was reached by the Supreme Court of Mississippi in

Hines v. McCoy, 159 So. (Miss.) 306

That was a guardianship case in Mississippi wherein the guardian claimed credit for attorney fees in the amount of \$1,300 for securing payment of war-risk insurance, which fee was allowed by the Chancery Court having jurisdiction. On appeal by the Administrator the Supreme Court of Mississippi reversed the Chancellor's decree saying:

The main argument in justification of the allowance of the \$1,300 fee, and the chancellor's act in sustaining the demurrer to the petition of Hines, the administrator of veteran's affairs, is that the chancery court is not controlled by the federal authorities in the administration of estates, after the money has passed into the hands of the guardian, and that the federal administrator has no standing to intervene and question any act done in the administration, because he has no such interest as would warrant his intervening, and that it would be a meddling by bureaus of the federal government to allow a federal administrator to control the state courts.

We do not think this contention can be maintained. . There is no effort, as we understand the proceeding here, for the federal government to undertake to control the state court, but the government seeks to see that the money allowed to war veterans through insurance is properly and economically administered. The federal government has the right to provide, as a condition of the policies and the allowances, as it has provided that not more than a given amount (\$10.00) shall be allowed for procuring the money from the government for war veterans. If a suit is necessary, the federal act provides that same may be brought in a federal court, and that that court may allow a reasonable attorney's fee. There is nothing in the petition by the guardian for the allowance showing that the chancellor entered any finding that the \$1,300, or any part of it, was allowed by the federal government for services rendered in procuring the insurance. On the contrary, the federal administrator shows that there was no such proceeding.

The United States has a standing in the courts of this state to assert any rights it has, or may have, of a justiciable nature.

It appears to us that, by the rules of comity, the Veterans' Administrator should be permitted to come into court and challenge any improper allowance of the money received from the government. It certainly

would not be contrary to public policy so to do. * * * * *

The appellant, therefore, was authorized to intervene and challenge the allowance. Under the allegations of the petition of Frank T. Hines, to which the demurrer was allowed, the fee was clearly excessive, and there was no specification of items in the administrator's petition for allowance showing what the services were for, whether they were for procuring the money from the government, or whether for the filing of the two annual accounts. We think the allegations of the petition were sufficient to require an answer, and the court should hear evidence on both sides and determine the cause in the light of such hearing.

To the same effect is the decision, *In re Minor*, 145 So. 507. In that case the facts are stated by the decision:

Roy C. Minor had a policy of War Risk insurance from the Government. When J. H. Minor took out letters of guardianship he noted that a portion of the premium was in default, and he sought to pay the premium to the Government which refused to receive it. He thereupon consulted his attorney, and they agreed that the attorney would undertake to investigate the matter and take the necessary steps to procure the reinstatement of the policy or adjusted compensation, and that the attorney would be paid such compensation for his services as the court would allow. This attorney, at considerable

expense of time and money, investigated the matter fully, and established that Roy C. Minor became wholly incapacitated before the lapse of the policy. This attorney took proof and presented same to the Government which accepted the situation, and allowed to the Guardian, as adjusted compensation, the sum of \$12,666.00, of which \$11,000 had been paid prior to the filing of the petition.

It was established, and the Chancellor found, that the attorney's services were reasonably worth ten per cent of said amount, and that the soldier's compensation was secured through the efforts of the attorney, but the Chancellor further found that, under Section 551, United States Code, Anno. Title 38, he could not allow the fee as no suit had been filed on behalf of Roy C. Minor for the purpose of procuring this adjusted compensation, and disallowed the claim.

After quoting Section 500 the Court held:

As no suit was filed, it appears that the fee as allowed by this section, shall be \$10.00, and the courts cannot allow more where there is no suit filed.

The validity of the Federal statute was upheld in the case of *Margolin v. United States*, 269 U. S. 93, 70 L. E. 176. In *Welty v. United States*, 2nd Federal Reporter (2nd) 562, it was held that the statute does not prevent a guardian, or other person, paying, out of his own funds, compensation to

an attorney for his services, but that the estate of the ward could not be taxed with an additional fee unless suit was filed.

In the case at bar, it is true that the actual expenses of the attorney largely exceeded the fee allowed by the statute, but we are without power to create authority to tax the estate of the soldier with additional fees.

That the rule stated in these decisions was not changed by this court's decision in *Hines v. Stein* seems to have been the view of the Supreme Court of California in its first decision in the case of

In re Copsey, 60 Pac. (2d) 121

That was a guardianship case in the Superior Court, Mendocino County, California, wherein the sister and guardian of an insane veteran employed an attorney to file a claim on his war risk insurance contract. The papers were prepared and claim filed, and paid without suit as in the instant case. The Superior Court, on the guardian's application, allowed the attorney a fee of \$4,000 for such services, approximately 31% of the insurance paid. An appeal, based as in the instant case, on Section 500, was filed by the Administrator, and the attorney filed a motion to dismiss the appeal urging certain alleged defects of procedure—as well as that the Administrator was not a proper party—but principally that the matter had been disposed of by the decision of this Court in *Hines v. Stein*. The California Supreme Court in refusing to dismiss the appeal said (p. 123):

Respondent has directed our attention to a recent case decided by the United States Supreme Court, *Frank T. Hines vs. Minnie Stein*, as guardian, etc. 56 S. Ct. 699, 701, 80 L. E. 1063, decided April 27, 1936, which he claims is conclusive of the present appeal. In that case the administrator of veterans' affairs objected to an attorney's fee, which was allowed by the local court to an attorney for special services rendered by him in the guardianship matter, on the ground that the same was in excess of the amount fixed by the federal statutes and in the president's order promulgated thereunder. *Practically the same contentions made by the appellant in the present guardianship matters were made there.* The Supreme Court of the United States held in that case, that "We find nothing in any of these acts of congress which definitely undertakes to put limitation upon state courts in respect of guardians or to permit any executive officer, by rule or otherwise, to disregard and set at naught orders by courts to guardians appointed by them." It accordingly affirmed the order of the court of common pleas fixing and allowing said attorney's fees. But in that case the appellant admitted that the services were rendered by the attorney and that the charge was reasonable. While the appellant in his brief does not stress the point that the charge of \$4,000 for extraordinary services rendered by the attorney in the Copsey guardianship matter was unreasonable, he does not expressly or by implication in any

stage of these proceedings admit its reasonableness. *This distinction between the two cases deprives the cited case of any authoritative force upon the hearing of respondent's present motion to dismiss.* Incompetent persons are made the special wards of the court, and it is the duty of the court to protect them and their property, whenever it appears from the records in any proceeding before the court, that such action is necessary or advisable. [Italics supplied.]

The Supreme Court of California in deciding the case on the merits (76 Pac. (2d) Adv. 691) held that the court could allow a fee in excess of \$10, but that the \$4,000 fee was unreasonable, and suggested that the fee to be allowed on remand should not exceed 10% of the insurance paid. But in its opinion that Court said (p. 693):

In view of the fact that incompetent persons are made the special wards of the court, and it is the duty of the court to protect them and their property (Guardianship of Copsey, supra), it would seem to follow as a matter of reason and logic that attorneys' fees, in excess of the schedule set out in Section 551, Title 38, United States Code, as permissible to be allowed an attorney for a competent veteran, could not be validly allowed the attorney for the guardian of an incompetent veteran. Several state courts have so held. (In re Shinberg, 263 N. Y. S. 354; In re Roy C. Minor (Miss.), 145 So. 507; Hines v. McCoy (Miss.), 159 So. 306.)

If the government is zealous to protect competent veterans from unreasonable expense in the collection of their claims for government aid, with how much more reason should the estates of incompetent veterans be protected from excessive charges. We are, however, squarely faced with the recent decision of the United States Supreme Court in the case of Hines v. Stein, as guardian, etc., 298 U. S. 94, decided April 27, 1936.

Although the above case deals with compensation payments, whereas the instant case deals with insurance, and although the sections involved are different, Sections 111, 114, and 115 of Title 38, U. S. C., being involved in the cited case, whereas Section 551 of Title 38, U. S. C., is the section which governs and controls in the instant case, these differences do not furnish a logical basis for a distinction between the cited case and the instant case nor furnish us with a reasonable basis for holding that the case of *Hines v. Stein, supra*, is not controlling in the instant case. We are, therefore, constrained to hold, by virtue of this recent decision of the United States Supreme Court, that the probate court in the instant case could validly allow an attorney's fee for services rendered to the guardian of an incompetent veteran in excess of the schedule set out in Section 551 of Title 38 of the United States Code. [Italics supplied.]

Of course the mere name of the benefit, whether pension, compensation, or insurance, is not the dis-

tinctive factor. Indeed, this court has held that compensation is another name for pension and that War Risk Term Insurance partakes in part of the nature of a pension. But it does not follow that the Congress saw fit to prescribe the same limitations respecting such benefits. Pensions are subject to the pension statutes; compensation and insurance to the World War Veterans' Act as amended.

The language quoted by the California Supreme Court from the *Stein* decision, "We find nothing in any of these Acts of Congress which definitely undertakes to put limitation upon State Courts * * *" was used by this court, it is believed, by way of discussion rather than decision, and concerned pension laws rather than Section 500. The claim in the *Stein* case was for a pension, not compensation (Sec. 17 of the Economy Act had repealed all laws granting compensation). The acts enumerated by this court were Pension Acts, not Section 500. It does not follow, the California Court decision to the contrary, that there is no distinction between the cases, or that the *Stein* case is controlling in the instant case, or that Section 500 must be construed to the same effect as the pension acts in the *Stein* case. To determine that question involves study of the terms of the statute, and, if at all doubtful, of the legislative history thereof. The distinction which the California Supreme Court apparently desired to make but could not see its way clear so to do, inheres not in the type of

benefit but in the terms and intent of the applicable statute. In the *Stein case*, as pointed out by this court, there was involved an Executive Order (Veterans' Regulation) purporting to extend the civil and penal provisions of certain pension statutes to claims for benefits payable under Public, No. 2, 73d Congress. (In passing, these have been replaced by Public, No. 844, 74th Congress, Act of June 29, 1936, Section 200-3.) In the instant case, there is for application legislative language, characterized by this court (*Margolin case*, *supra*) as clear and unambiguous—

* * * no attorney * * * shall be recognized in the presentation or adjudication of claims * * * and payment to any attorney * * * for such assistance as may be required in the preparation * * * of the necessary papers in any application to the bureau shall not exceed \$10 in any one case * * * (except as to a suit in the Federal Court in which event a reasonable fee not to exceed 10% of the judgment can be allowed by said court) any person who shall directly, or indirectly, solicit, contract for, charge, or receive, or who shall attempt * * * (to do so), except as herein provided, shall be guilty of a misdemeanor * * *. [Italics and parentheses supplied.]

The Congressional intent, it is submitted, is apparent in the language used; but if there were any doubt it must disappear in the light of the legislative history. The Congress clearly had in mind

the necessity for protection of insane veterans, and the law was intended as an aid to the courts in vouchsafing that protection.

In what more apt language could the prohibition have been expressed to show such intent? The same language has been used consistently in acts authorizing appropriated moneys to be paid direct to guardians. For example, observe Private Act No. 563, 74th Congress.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is hereby authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, *to the legal guardian of Randall Krauss*, a minor, of Yakima, Washington, the sum of \$60 per month until he attains the age of twenty-one, in full satisfaction of his claims against the United States for the death of his father, mother, and sister, who were killed when struck by a United States Army airplane which crashed at Griffith Park, California, on June 20, 1935: *Provided*, That payments hereunder shall begin on the first calendar day of the month following the approval of this Act: *Provided further*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to

the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000. [Italics supplied.]

8. The decision of this Court in *Hines v. Stein* did not construe said Section 500 and does not govern the application thereof, but the case is controlled by the decision in *Ball v. Halsell*, and *Capital Trust Company v. Calhoun*, *supra*.

That this Court was not considering Section 500 in the Stein decision seems clear from the following language (298 U. S. 97):

The petition for certiorari asserts that the objections to respondent's application to the Court of Common Pleas were based upon the President's Order of March 31, 1933 (Veterans' Regulation No. 10), permitted by sections 4 and 7 of the Act of March 20, 1933, c. 3, 48 Stat. 9; "Instructions" promulgated by the Administrator under authority of that Order; and sections 111, 114, and 115, Title 38, U. S. C. A.

Section 500 (Section 551, Title 38, U. S. C.) is self-executing (C. C. Appeals, 2nd, *Margolin case*, *supra*) and is dependent upon no Regulation or order. The language used in Section 500 differs from that of the pension acts, and is even more specific than that contained in the statutes construed in the *Ball v. Halsell*, *Capital Trust Company v. Calhoun*, and *Calhoun v. Massie cases*, *supra*. It does not require the Administrator to

determine and pay fees and expenses out of allowed benefits as does the pension acts, but absolutely forbids any fee in excess of \$10. The Veterans' Administration would have no administrative responsibility, were it not for Section 21, World War Veterans' Act as amended requiring the Administrator to appear in the guardianship court and object to fees that are illegal or in excess of those allowed by law. In so doing, he is representing the insane veteran; and the situation as to litigation does not differ essentially from that which existed in the cases of *Conlon v. Adamski*, 77 Fed. (2d) 397, and *Purvis v. Walls*, 184 Ark. 887, wherein the attorneys sued the veterans (sane) on a contract for a fee and the defense, successfully interposed, was the limitation of Section 500. It is only to insure that the insane veteran under guardianship may have the same defense that he, if sane, could himself interpose.

Nor is the question of reasonableness of the fee (dehors the statute) believed determinative. True, this court called attention to the reasonableness of the fee in the *Stein case*, and the Supreme Court of California stressed the question of reasonableness of the fee in the *Copsey case, supra*. But the pension statutes permitted the rendering of the legal services in the *Stein case*, and the fee was little more than the attorney could have charged in strict accord with the statute for fees and expenses.

But Section 500 prohibits services except in the

preparation of the papers, and limits, to \$10 the fee therefor. *Margolin case*, supra. In the absence of statute, what is a reasonable fee? That it is a matter of opinion may be illustrated by the instant case and that of *In re Copsey*, 76 Pac. (2d) 691. In each case the attorneys prepared the papers, filed the claims, and procured the insurance to be paid without suit—the amount of insurance paid in each case being approximately \$12,000. For such services the New York courts allowed the attorney his expenses and a fee of \$1,500; the California Superior Court allowed a fee of \$4,000—which, however, the Supreme Court of California said was unreasonably excessive. But the matter is not labored here; for if the State Court had any authority of law to allow any fee in excess of that stated in the Federal Statute then the decision of the State Appellate Court on that question would not be reviewable by this Court. And this would be true of the \$4,000 fee (31% of the insurance received) allowed by the California Superior Court in the *Copsey case*—it would be true whether the fee be 1% or 100% of the insurance. It was to settle such matters that Congress enacted the fee limitation and the need for such limitation is illustrated by the two cases discussed. For if the \$10 limitation is not controlling, neither is the 10% in event of a suit. Indeed, if successful in a suit in the Federal Court, it would pay an attorney not to ask for a 10% fee therein, but to go

into a State Probate Court and get a 20% or 30% fee. And if Section 500 be not controlling on all, he could lawfully procure a fee in the State Court whether successful or unsuccessful in getting the insurance paid. Section 500 must control, or the intent and purpose of the Congress be thwarted.

The amount of work involved is immaterial and the question of reasonableness of the fee academic. Legislation, not court action, is the remedy—if one be necessary. The attorney could secure a fee only under the contract alleged or on a quantum meruit. A contract for any fee in excess of \$10 would have been illegal. *Purvis v. Walls*, 44 S. W. (2d) 353; *Conlon v. Adamski*, 77 Fed. (2d) 397; *Purvis v. United States*, 61 Fed. (2d) 992. If a court may not permit recovery on an illegal contract of a sane person, how may it validly allow the same result (i. e. fee in excess of that fixed by Statute) to be attained on a quantum meruit—or any other—basis in the case of an insane person! This court said in *Ball v. Halsell*, 161 U. S. 72:

Ball cannot maintain this action upon the contract between him and Halsell; and he does not sue, and could not recover, upon a quantum meruit.

That is to say the contract for 50% was made illegal by the law, and the law prescribed the limit of any fee to be charged. In short, courts have no power to allow that which is unlawful or prohibited by law. *Capital Trust Company v. Calhoun*, 250 U. S. 208.

9. The contract, if construed contrary to Section 500, is clearly illegal and void.

The contract made by the guardian is clearly illegal unless construed—as it may be—in consonance with Section 500. That is, if suit in the Federal Court had been necessary, as probably was contemplated, then, in the event of success, the fee would have been “fixed by the court”—the Federal District Court—at not to exceed 10 per cent of the judgment as provided by said Section 500. Any other contract would be illegal as held by the 8th Circuit Court of Appeals in *Purvis v. United States*, 61 Fed. (2d) 992, and by the Court of Appeals, District of Columbia, in *Conlon v. Adamski*, 77 Fed. (2d) 397.

If the latter case the Court of Appeals (D. C.) said (77 Fed. (2d) 397):

Appellant James Conlon and appellee Roman Adamski on September 11, 1933, entered into a contract in writing whereby appellee employed appellant as attorney to bring a mandamus proceeding in the Supreme Court of the District of Columbia to enforce the payment of a claim alleged to be due him upon a war risk insurance policy for the sum of \$8,740. According to the contract, out of this claim, appellant was to be paid for his services in the sum of \$2,500.

Assuming, however, though by no means conceding, that section 3477, R. S. supra, is inapplicable to the present case, appellant's contention would not be improved, since he

comes in conflict with the provisions of Section 551, Title 38 U. S. C. (38 U. S. C. A., Section 551), which makes it a criminal offense under any circumstances "to solicit, contract for, charge, or receive, any fee or compensation" in excess of 10 per centum of the amount recovered in such a proceeding.

In the former the court (8th Circuit) declared (61 Fed. (2d) p. 998):

The proposition urged that federal statutes cannot prescribe the qualifications of suitors in state courts is beside the point. Here there has been no attempt to do so. Appellant had an undoubted right to make a contract with the Walls for compensation for his services, and to sue thereon; but the amount of the compensation contracted for, or sued for, must not exceed the maximum allowed by the statute for the particular services rendered. The question is not one of appellant's right to make a contract, or to sue thereon—it is whether he attempted thereby to secure or receive a fee in excess of that allowed by Section 551, *supra*. If he did, then he has violated that statute.

There is no reason why Congress, having created a plan of war risk insurance for the benefit of the soldiers, may not limit the compensation an attorney or agent may receive for assisting the beneficiary in securing benefits due him. Congress can impose such limitations in this connection as it may

deem desirable. If a contract for compensation for services rendered in securing payment of war risk insurance claims were a legitimate defense where an attorney is charged with soliciting or receiving fees prohibited by the statute, a large loophole would be opened for circumventing the statute by all manner of subterfuge.

Similarly with the statute involved in the instant case, there is no ambiguity, the language is clear and it was undoubtedly adopted by Congress to prevent the fleecing of beneficiaries under these war risk insurance certificates, and, if an attorney or agent is not willing to abide by the statute and run the risk of receiving only \$10 as a fee for all work done in case suit is not brought, he is under no obligation to take the case. He cannot avoid the provisions of the act by any contract. *Lopez v. United States* (C. C. A.) 17 Fed. (2d) 462. The alleged contract in the instant case is no defense.

10. Section 500 establishes a general fee limitation in favor of an insane veteran which the court has no power to waive.

There is a further distinction between Section 500 and the Regulations and laws considered in the Stein case, in that Section 500, except in case of a judgment in a Federal District Court, does not confine prohibition of payment of the fee to benefits received under the act, but prohibits absolutely any fee in excess of \$10 for services rendered the vet-

eran or on his behalf in connection with a claim whether successful or otherwise.

This phase of the statute was given extensive examination in a case which was decided by the Circuit Court of Appeals, 6th Circuit.

Welty v. United States, 2 Fed. (2d) 562

The decision in that case was solely on the point that defendant was entitled to an instruction as to the meaning of Section 13, War Risk Insurance Act (Section 500 here involved). The Circuit Court of Appeals reversed the lower court which had refused defendant's requested charge therein. The discussion therefore is mentioned here not as direct authority but as illustrative and because of its persuasive application to the instant case. Judge Mack stated the controverted facts as follows (p. 563):

Franklin R. Strayer became insane only a few days after his arrival in camp. His father maintained him at a sanitarium, incurring heavy expenses. An application for compensation under the War Risk Insurance Act had been refused, on the ground that the condition did not arise while he was in the service. Defendant, who had been a congressman, was then applied to by the father. The conflict in the facts is whether he was to receive for his services, if successful in securing compensation under the act for Strayer and payment therefrom to the father for the expenses incurred by him on

behalf of the son, one-third of the compensation so to be secured for the son, or whether his employment was solely by and on behalf of the father, and his payment to be made solely by the father, of one-third of such sum as might be allowed to the father because of the expenses incurred by him for his son, plus any expenses to which the defendant might be put in the matter.

After mentioning the view that the statute undoubtedly is within the constitutional power of Congress, and the belief that it did not cover a fee that might be paid gratuitously by a third person, the court stated (p. 563)—

* * * the necessary construction of the statute under the rules governing penal acts is to limit the prohibition to payments to be made *by or out of the funds of the applicant and to dealings with him or on his behalf* * * * [Italics supplied.]

(At p. 564:)

As we interpret the statute, it permits a charge of \$3 to the applicant himself for services in the preparation and execution of the necessary papers, and prohibits any charge whatsoever to him for any additional services in the prosecution of the claim. Even though claim agents and attorneys are not to be recognized in the presentation or adjudication of claims, the rendering by them of services in the prosecution of the claims, gratuitously so far as the applicant is concerned, is not forbidden.

The vital question in this case was whether or not the defendant indirectly solicited or received compensation out of the funds that belonged to the insane applicant, or whether his dealings were entirely with and on behalf of the father and his compensation to be paid solely out of anything that the father might justly recover from the estate of his son.

If, as the government contends, the amount received was not made up of items of expenses actually incurred under agreement for reimbursement by the father out of his own funds, plus one-third of the balance of the father's fund, that fund being his just claim as allowed by the state court against the estate of his son for expenses actually incurred by him and services actually rendered by him to the son—if, in other words, these proceedings were more or less of a subterfuge intended to hide the actual transaction, and if the actual agreement, though made with the father, was made by him on behalf of his son, and was that the defendant should receive one-third of the amount allowed by the Government to the son—then the verdict would be just.

The court next referred to the exemption against the claims of creditors then contained in Section 28 War Risk Insurance Act—now Section 454, Title 38, U. S. C., and said (p. 564):

This right of exemption was not asserted in the state court by the guardian who had no other property in the boy's estate; the at-

tention of the probate judge apparently was not directed to the right of exemption; it may well be that if it had been called to his attention, he might, in view of the nature of the claim-moneys advanced for absolute necessities of life, have directed the guardian to waive it just as the soldier himself, if sane, could have waived it. If, however, defendant, Welty, with knowledge of this provision, participated in any arrangement whereby the right of exemption was to be waived without knowledge or authority of the court and for the purpose of enabling a fund to be created from the compensation money out of which alone he was to be paid, the jury would be justified in finding therein an indirect and prohibited charge, and the later receipt of payment for services out of funds that belonged to the insane applicant.

By no subterfuge can the prohibited payments be indirectly solicited or received; and while the judgment of the state court may be binding as between the parties thereto—if in fact it be but a step in the carrying out of the subterfuge—the judgment rendered therein affords no defense in this case.

But in the discussion quoted, the court failed to state a very significant and fundamental principle, viz, that a court, acting for a ward, can waive an exemption on his behalf (statute of limitations, fee limitation statute, or exemption from claims of creditors) only when to do so is for the benefit of the ward.

Ratchliffe, Guardian v. Davis et al., 20 N. W., 763
(Sup. Ct. Iowa)

↗ (At p. 763:)

It is not necessary to set out all of the grounds for the demurrer. One of these is to the effect that it is not within the power of the guardian to waive the homestead rights of his ward.

It is claimed by her guardian that because she is incapable of making her wishes known, that his preference shall be substituted for hers, and that he can waive the statutory provisions. We do not think he has any power to do so, because, as it appears to us, the right is a personal one, and if not exercised for any reason, even though it be her incapacity to do so, no other person can act in that behalf in her stead.

It does not even appear from the averments of the petition that it would be to her interest, or the interest of her children, that the homestead should be waived.

Estes v. Browning, 60 Am. Dec. 238, (11 Tex. 237)

(At p. 241:)

As a matter of policy, then, and as one very beneficial to estates, administrators are required to set up the statute in cases to which it applies. But this rule has no force in cases where its application would be detrimental, perhaps ruinous, to the estate.

To the same effect is *King v. Cassidy*, 36 Tex. 531. Indeed the court must recognize and refuse

to waive the exemption or limitation, contrary to the expressed wishes of the ward; if not for the best interests of the ward.

Alling v. Alling, 27 Atl. 655 (52 N. J. Eq. 92)

(At p. 656:)

At the death of the husband, the widow and her infant child were substantially without means and the mother was obliged to work to earn a living for both. * * * Her demand against the daughter for her support, education, and maintenance amounts to over \$12,000, or four-fifth's of the child's fortune; and yet the daughter, an intelligent young lady, frankly declared on the stand that she wished her mother to be paid in full. It is hardly necessary to say that this court cannot act upon such consent, but must defend the daughter, even against her own mother's claim, examine the demand, and see if it is lawful and proper to be countenanced and enforced by this court.

* * * * *

The statute of limitations is binding on this court, as well as on the courts of law; and wherever a pecuniary demand will be barred at law it will be barred here, unless there is some circumstance in the case which renders it inequitable for the party entitled to its benefit to set it up. We have seen that this is a simple pecuniary demand, founded on a quantum meruit, and I am unable to find in the case any circumstances which renders it inequitable for this defendant to

set up the bar of the statute against her mother. *She is clearly entitled to the benefit of the plea, and it is the duty of this court, as her guardian, to plead it for her.* When she attains 21 years of age, she can do what she pleases with her money, but this court cannot permit her to give it away, even to her own mother. [Italics supplied.]

A fortiori, the probate court must invoke the fee limitation in favor of an insane veteran ward. *Hines v. Copsey*, 76 Pac. (2d) 691 (Adv.).

11. The theory of, and reasons for, the limitation of attorney fees in insurance and compensation cases are identical with those underlying the New York statute limiting such fees in Workmen's Compensation Cases.

The public policy established for this class of cases is in harmony with that of the State of New York, and other states, with respect to attorney fees in Workmen's Compensation Cases, for example (Sec. 24, Workman's Compensation Law, New York).

In re Fish, 177 N. Y. S. 338

One of the avowed reasons for the passage of the Workmen's Compensation Act was to insure as large a return to the injured workman in compensation for injuries incurred in the course of his employment as possible. It was realized that under the conditions theretofore prevailing the great majority of cases were taken by lawyers on

contingent fees, and that from 33 to 50 per cent of the amounts recovered went to the attorneys, instead of to the workmen. Simplicity of procedure, rapidity and certainty in procuring payment, and receipt by the injured of the bulk of the award, instead of large payments therefrom for services in obtaining it, was the end looked to and accomplished by this remedial legislation.

We do think, however, it is our duty to warn the profession that we regard such conduct, or the use of any means *which the wit of man may devise*, by which a larger amount of the recovery shall go to an attorney than that fixed by the commission, as improper, unethical, and deserving of disciplinary action. We think it clear that we ought to take this stand in support of this legislation and that hereafter we shall act upon such offenses accordingly. [Italics supplied.]

These reasons are more impelling than those stated by this court in the *Stein case*; and as shown have been so recognized by the Congress as well as state legislatures.

12. Finally, the veteran contracted for the protection of the Statute, and the court must give effect to the fee limitation as a part of the veteran's contract.

The contract which the veteran made with the United States entitled him to receive his insurance undiminished by attorney fees except in consonance

with the Act (Section 500). This Court has recognized that the contract of insurance consisted in the application filed by the soldier and the law and regulations pursuant to law, and that it was in all respects subject to the provisions of the law. *White v. United States*, 270 U. S. 175.

The certificate of insurance provided in terms that it should be "subject in all respects to the provision of such Act (of 1917), of any amendments thereto, and of all regulations thereunder, now in force or hereafter adopted, all of which, together with the application for this insurance, and the terms and conditions published under authority of the act, shall constitute the contract." These words must be taken to embrace changes in the law no less than changes in the regulations.

The veteran, even though now insane—we urge even more so—is entitled to the protection of his contract. This contract was binding on the committee, which as an arm of the court, acts for his ward and is bound by the law applicable to the ward. The court has power to act for the ward in some instances, but it cannot do that which the ward, if sui juris, could not legally do. And if it be argued that the veteran himself might with impunity pay his attorney an illegal fee, such liberty to ignore the law is not vouchsafed guardians with the approval of courts. As this Court significantly observed in *Hall v. Coppel*, 7 Wal.

542, "The principle to be extracted from all the cases is that the law will not lend its support to a claim founded upon its violation." Approved in *Oscanyan v. Winchester Repeating Arms Co.*, 103 U. S. 261.

SUMMARY

(A) The United States has by statute (Sec. 500, World War Veterans' Act, Section 551, Title 38, U. S. C.) limited the fees which may be charged by any one in connection with a claim for war risk insurance.

(B) This limitation was intended to, and does, apply to guardianship cases in State courts, and is binding on said courts and on all agents and officers of the court.

(C) To hold otherwise would mean that a law of the United States, intended for the protection of all veterans, may, in effect, be so narrowed in its application, or abridged by judicial decision, as to deny an insane veteran that protection. It would challenge the constitutional power of Congress to provide for the common defense or in the exercise of such power to protect veterans, their beneficiaries, and dependents, in the full enjoyment of the benefits provided for them by a grateful government. It would be to hold that an insane veteran, supposedly under the protection of the probate court, may be deprived of the safeguard not only promised him by the Government he served, but

for which he contracted and paid; and would deny the efficacy of such contract.

(D) Under what is believed the proper construction of the statute, the judgment of the New York Court was contrary to the law.

CONCLUSION

It is respectfully submitted that, for the reasons stated, and upon the authorities cited herein, the judgment of the Supreme Court, Appellate Division, Second Department, State of New York, should be reversed with costs, but not against the estate of the insane veteran.

JAMES T. BRADY,
Solicitor, Veterans' Administration.

EDWARD E. ODOM,
Asst. Solicitor, Veterans' Administration.

JAMES A. CLARK,
*Chief Attorney, Veterans' Administration,
New York City, New York.*

Y. D. MATHES,
Asst. Solicitor, Veterans' Administration.